

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 37

Introduced by Assembly Member Perea

December 3, 2012

An act to amend, repeal, and add Section 21167.6 of, and to add and repeal Section 21167.6.2 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 37, as amended, Perea. Environmental quality: California Environmental Quality Act: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require, until January 1, 2017, *for specified projects or upon the request of a project applicant and the consent of the lead agency, that the lead agency, at the request of a project applicant, to,*

among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. Because the bill would require, *for specified projects*, a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21167.6 of the Public Resources Code
2 is amended to read:

3 21167.6. Notwithstanding any other law, in all actions or
4 proceedings brought pursuant to Section 21167, except as provided
5 for in Section 21167.6.2 or those involving the Public Utilities
6 Commission, all of the following shall apply:

7 (a) At the time that the action or proceeding is filed, the plaintiff
8 or petitioner shall file a request that the respondent public agency
9 prepare the record of proceedings relating to the subject of the
10 action or proceeding. The request, together with the complaint or
11 petition, shall be served personally upon the public agency not
12 later than 10 business days from the date that the action or
13 proceeding was filed.

14 (b) (1) The public agency shall prepare and certify the record
15 of proceedings not later than 60 days from the date that the request
16 specified in subdivision (a) was served upon the public agency.
17 Upon certification, the public agency shall lodge a copy of the
18 record of proceedings with the court and shall serve on the parties
19 notice that the record of proceedings has been certified and lodged
20 with the court. The parties shall pay any reasonable costs or fees
21 imposed for the preparation of the record of proceedings in
22 conformance with any law or rule of court.

23 (2) The plaintiff or petitioner may elect to prepare the record
24 of proceedings or the parties may agree to an alternative method

1 of preparation of the record of proceedings, subject to certification
2 of its accuracy by the public agency, within the time limit specified
3 in this subdivision.

4 (c) The time limit established by subdivision (b) may be
5 extended only upon the stipulation of all parties who have been
6 properly served in the action or proceeding or upon order of the
7 court. Extensions shall be liberally granted by the court when the
8 size of the record of proceedings renders infeasible compliance
9 with that time limit. There is no limit on the number of extensions
10 that may be granted by the court, but no single extension shall
11 exceed 60 days unless the court determines that a longer extension
12 is in the public interest.

13 (d) If the public agency fails to prepare and certify the record
14 within the time limit established in paragraph (1) of subdivision
15 (b), or any continuances of that time limit, the plaintiff or petitioner
16 may move for sanctions, and the court may, upon that motion,
17 grant appropriate sanctions.

18 (e) The record of proceedings shall include, but is not limited
19 to, all of the following items:

20 (1) All project application materials.

21 (2) All staff reports and related documents prepared by the
22 respondent public agency with respect to its compliance with the
23 substantive and procedural requirements of this division and with
24 respect to the action on the project.

25 (3) All staff reports and related documents prepared by the
26 respondent public agency and written testimony or documents
27 submitted by any person relevant to any findings or statement of
28 overriding considerations adopted by the respondent agency
29 pursuant to this division.

30 (4) Any transcript or minutes of the proceedings at which the
31 decisionmaking body of the respondent public agency heard
32 testimony on, or considered any environmental document on, the
33 project, and any transcript or minutes of proceedings before any
34 advisory body to the respondent public agency that were presented
35 to the decisionmaking body prior to action on the environmental
36 documents or on the project.

37 (5) All notices issued by the respondent public agency to comply
38 with this division or with any other law governing the processing
39 and approval of the project.

1 (6) All written comments received in response to, or in
2 connection with, environmental documents prepared for the project,
3 including responses to the notice of preparation.

4 (7) All written evidence or correspondence submitted to, or
5 transferred from, the respondent public agency with respect to
6 compliance with this division or with respect to the project.

7 (8) Any proposed decisions or findings submitted to the
8 decisionmaking body of the respondent public agency by its staff,
9 or the project proponent, project opponents, or other persons.

10 (9) The documentation of the final public agency decision,
11 including the final environmental impact report, mitigated negative
12 declaration, or negative declaration, and all documents, in addition
13 to those referenced in paragraph (3), cited or relied on in the
14 findings or in a statement of overriding considerations adopted
15 pursuant to this division.

16 (10) Any other written materials relevant to the respondent
17 public agency's compliance with this division or to its decision on
18 the merits of the project, including the initial study, any drafts of
19 any environmental document, or portions thereof, that have been
20 released for public review, and copies of studies or other documents
21 relied upon in any environmental document prepared for the project
22 and either made available to the public during the public review
23 period or included in the respondent public agency's files on the
24 project, and all internal agency communications, including staff
25 notes and memoranda related to the project or to compliance with
26 this division.

27 (11) The full written record before any inferior administrative
28 decisionmaking body whose decision was appealed to a superior
29 administrative decisionmaking body prior to the filing of litigation.

30 (f) In preparing the record of proceedings, the party preparing
31 the record shall strive to do so at reasonable cost in light of the
32 scope of the record.

33 (g) The clerk of the superior court shall prepare and certify the
34 clerk's transcript on appeal not later than 60 days from the date
35 that the notice designating the papers or records to be included in
36 the clerk's transcript was filed with the superior court, if the party
37 or parties pay any costs or fees for the preparation of the clerk's
38 transcript imposed in conformance with any law or rules of court.
39 Nothing in this subdivision precludes an election to proceed by

1 appendix, as provided in Rule 8.124 of the California Rules of
2 Court.

3 (h) Extensions of the period for the filing of any brief on appeal
4 may be allowed only by stipulation of the parties or by order of
5 the court for good cause shown. Extensions for the filing of a brief
6 on appeal shall be limited to one 30-day extension for the
7 preparation of an opening brief, and one 30-day extension for the
8 preparation of a responding brief, except that the court may grant
9 a longer extension or additional extensions if it determines that
10 there is a substantial likelihood of settlement that would avoid the
11 necessity of completing the appeal.

12 (i) At the completion of the filing of briefs on appeal, the
13 appellant shall notify the court of the completion of the filing of
14 briefs, whereupon the clerk of the reviewing court shall set the
15 appeal for hearing on the first available calendar date.

16 (j) This section shall remain in effect only until January 1, 2017,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2017, deletes or extends that date.

19 SEC. 2. Section 21167.6 is added to the Public Resources Code,
20 to read:

21 21167.6. Notwithstanding any other law, in all actions or
22 proceedings brought pursuant to Section 21167, except those
23 involving the Public Utilities Commission, all of the following
24 shall apply:

25 (a) At the time that the action or proceeding is filed, the plaintiff
26 or petitioner shall file a request that the respondent public agency
27 prepare the record of proceedings relating to the subject of the
28 action or proceeding. The request, together with the complaint or
29 petition, shall be served personally upon the public agency not
30 later than 10 business days from the date that the action or
31 proceeding was filed.

32 (b) (1) The public agency shall prepare and certify the record
33 of proceedings not later than 60 days from the date that the request
34 specified in subdivision (a) was served upon the public agency.
35 Upon certification, the public agency shall lodge a copy of the
36 record of proceedings with the court and shall serve on the parties
37 notice that the record of proceedings has been certified and lodged
38 with the court. The parties shall pay any reasonable costs or fees
39 imposed for the preparation of the record of proceedings in
40 conformance with any law or rule of court.

1 (2) The plaintiff or petitioner may elect to prepare the record
2 of proceedings or the parties may agree to an alternative method
3 of preparation of the record of proceedings, subject to certification
4 of its accuracy by the public agency, within the time limit specified
5 in this subdivision.

6 (c) The time limit established by subdivision (b) may be
7 extended only upon the stipulation of all parties who have been
8 properly served in the action or proceeding or upon order of the
9 court. Extensions shall be liberally granted by the court when the
10 size of the record of proceedings renders infeasible compliance
11 with that time limit. There is no limit on the number of extensions
12 that may be granted by the court, but no single extension shall
13 exceed 60 days unless the court determines that a longer extension
14 is in the public interest.

15 (d) If the public agency fails to prepare and certify the record
16 within the time limit established in paragraph (1) of subdivision
17 (b), or any continuances of that time limit, the plaintiff or petitioner
18 may move for sanctions, and the court may, upon that motion,
19 grant appropriate sanctions.

20 (e) The record of proceedings shall include, but is not limited
21 to, all of the following items:

22 (1) All project application materials.

23 (2) All staff reports and related documents prepared by the
24 respondent public agency with respect to its compliance with the
25 substantive and procedural requirements of this division and with
26 respect to the action on the project.

27 (3) All staff reports and related documents prepared by the
28 respondent public agency and written testimony or documents
29 submitted by any person relevant to any findings or statement of
30 overriding considerations adopted by the respondent agency
31 pursuant to this division.

32 (4) Any transcript or minutes of the proceedings at which the
33 decisionmaking body of the respondent public agency heard
34 testimony on, or considered any environmental document on, the
35 project, and any transcript or minutes of proceedings before any
36 advisory body to the respondent public agency that were presented
37 to the decisionmaking body prior to action on the environmental
38 documents or on the project.

1 (5) All notices issued by the respondent public agency to comply
2 with this division or with any other law governing the processing
3 and approval of the project.

4 (6) All written comments received in response to, or in
5 connection with, environmental documents prepared for the project,
6 including responses to the notice of preparation.

7 (7) All written evidence or correspondence submitted to, or
8 transferred from, the respondent public agency with respect to
9 compliance with this division or with respect to the project.

10 (8) Any proposed decisions or findings submitted to the
11 decisionmaking body of the respondent public agency by its staff,
12 or the project proponent, project opponents, or other persons.

13 (9) The documentation of the final public agency decision,
14 including the final environmental impact report, mitigated negative
15 declaration, or negative declaration, and all documents, in addition
16 to those referenced in paragraph (3), cited or relied on in the
17 findings or in a statement of overriding considerations adopted
18 pursuant to this division.

19 (10) Any other written materials relevant to the respondent
20 public agency's compliance with this division or to its decision on
21 the merits of the project, including the initial study, any drafts of
22 any environmental document, or portions thereof, that have been
23 released for public review, and copies of studies or other documents
24 relied upon in any environmental document prepared for the project
25 and either made available to the public during the public review
26 period or included in the respondent public agency's files on the
27 project, and all internal agency communications, including staff
28 notes and memoranda related to the project or to compliance with
29 this division.

30 (11) The full written record before any inferior administrative
31 decisionmaking body whose decision was appealed to a superior
32 administrative decisionmaking body prior to the filing of litigation.

33 (f) In preparing the record of proceedings, the party preparing
34 the record shall strive to do so at reasonable cost in light of the
35 scope of the record.

36 (g) The clerk of the superior court shall prepare and certify the
37 clerk's transcript on appeal not later than 60 days from the date
38 that the notice designating the papers or records to be included in
39 the clerk's transcript was filed with the superior court, if the party
40 or parties pay any costs or fees for the preparation of the clerk's

1 transcript imposed in conformance with any law or rules of court.
2 Nothing in this subdivision precludes an election to proceed by
3 appendix, as provided in Rule 8.124 of the California Rules of
4 Court.

5 (h) Extensions of the period for the filing of any brief on appeal
6 may be allowed only by stipulation of the parties or by order of
7 the court for good cause shown. Extensions for the filing of a brief
8 on appeal shall be limited to one 30-day extension for the
9 preparation of an opening brief, and one 30-day extension for the
10 preparation of a responding brief, except that the court may grant
11 a longer extension or additional extensions if it determines that
12 there is a substantial likelihood of settlement that would avoid the
13 necessity of completing the appeal.

14 (i) At the completion of the filing of briefs on appeal, the
15 appellant shall notify the court of the completion of the filing of
16 briefs, whereupon the clerk of the reviewing court shall set the
17 appeal for hearing on the first available calendar date.

18 (j) This section shall become operative on January 1, 2017.

19 SEC. 3. Section 21167.6.2 is added to the Public Resources
20 Code, to read:

21 21167.6.2. (a) (1) Notwithstanding Section 21167.6, for a
22 project described in subdivision (f), upon the written request of a
23 project applicant received no later than 30 days after the date that
24 a lead agency makes a determination pursuant to subdivision (a)
25 of Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing
26 with Section 21155), the lead agency shall prepare and certify the
27 record of proceedings in the following manner:

28 (1)

29 (A) The lead agency for the project shall prepare the record of
30 proceedings pursuant to this division concurrently with the
31 administrative process.

32 (2)

33 (B) All documents and other materials placed in the record of
34 proceedings shall be posted on, and be downloadable from, an
35 Internet Web site maintained by the lead agency commencing with
36 the date of the release of the draft environmental document for a
37 project specified in subdivision (f). If the lead agency cannot
38 maintain an Internet Web site with the information required
39 pursuant to this section, the lead agency shall provide a link on

1 ~~the agency's~~ *its* Internet Web site to *another Internet Web site*
2 *containing* that information.

3 ~~(3)~~

4 (C) Except as provided in subdivision (d) of Section 15120 of
5 Title 14 of the California Code of Regulations, the lead agency
6 shall make available to the public, in a readily accessible electronic
7 format, the draft environmental document for a project specified
8 in subdivision (f) and all other documents submitted to, cited by,
9 or relied on by, the lead agency in the preparation of the draft
10 environmental document for a project specified in subdivision (f).

11 ~~(4)~~

12 (D) A document prepared by the lead agency or submitted by
13 the applicant after the date of the release of the draft environmental
14 document for a project specified in subdivision (f) that is a part of
15 the record of the proceedings shall be made available to the public
16 in a readily accessible electronic format within five business days
17 after the document is released or received by the lead agency.

18 ~~(5)~~

19 (E) The lead agency shall encourage written comments on the
20 project to be submitted in a readily accessible electronic format,
21 and shall make any comment available to the public in a readily
22 accessible electronic format within five days of its receipt. *This*
23 *paragraph does not apply to comments that are submitted less*
24 *than five days prior to the decision on the project.*

25 ~~(6)~~

26 (F) Within seven business days after the receipt of any *written*
27 comment that is not in an electronic format, the lead agency shall
28 convert that comment into a readily accessible electronic format
29 and make it available to the public in that format. *This paragraph*
30 *does not apply to comments that are submitted less than seven*
31 *days prior to the decision on the project.*

32 ~~(7)~~

33 (G) The lead agency shall certify the record of proceedings
34 within 30 days after the filing of the notice required pursuant to
35 Section 21108 or 21152.

36 (2) *This subdivision does not require the disclosure or posting*
37 *of a trade secret, as defined in Section 6254.7 of the Government*
38 *Code, information about the location of archeological sites or*
39 *sacred lands, or any other information that is subject to the*
40 *disclosure restrictions of Section 6254 of the Government Code.*

1 (b) Any dispute regarding the record of proceedings shall be
2 resolved by the court in an action or proceeding brought pursuant
3 to subdivision (b) or (c) of Section 21167.

4 (c) The content of the record of proceedings shall be as specified
5 in subdivision (e) of Section 21167.6.

6 (d) Subdivisions (g) to (i), inclusive, of Section 21167.6 are
7 applicable to an appeal of a decision in an action or proceeding
8 brought pursuant to subdivision (b) or (c) of Section 21167.

9 (e) The negative declaration, mitigated negative declaration,
10 draft and final environmental impact report, or other environmental
11 document for a project specified in subdivision (f) shall include a
12 notice in no less than 12-point type stating the following:

13
14 “THIS NEGATIVE DECLARATION, MITIGATED
15 NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL
16 DOCUMENT IS SUBJECT TO SECTION 21167.6.2 OF THE
17 PUBLIC RESOURCES CODE, WHICH REQUIRES THE
18 RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE
19 PREPARED CONCURRENTLY WITH THE
20 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED
21 BY, OR SUBMITTED TO, THE LEAD AGENCY ~~TO~~ WILL BE
22 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE
23 *IN A TIMELY MANNER*, AND THE LEAD AGENCY TO
24 ENCOURAGE WRITTEN COMMENTS ON THE PROJECT
25 TO BE SUBMITTED TO THE LEAD AGENCY IN A READILY
26 ACCESSIBLE ELECTRONIC FORMAT.”

27
28 (f) This section applies to the record of proceedings for the
29 preparation of a negative declaration, mitigated negative
30 declaration, environmental impact report, or other environmental
31 document prepared for any of the following:

32 (1) A project determined to be of statewide, regional, or
33 areawide environmental significance pursuant to subdivision (d)
34 of Section 21083.

35 (2) A project subject to Section 21094.5 or Chapter 4.2
36 (commencing with Section 21155).

37 (3) (A) A project, other than one described in paragraphs (1)
38 and (2), for which the lead agency consents to prepare the record
39 of proceeding pursuant to this paragraph.

1 (B) The lead agency shall respond to a request by the project
2 applicant within 10 business days from the date that the request
3 pursuant to subdivision (a) is received by the lead agency.

4 (C) A project applicant and the lead agency may mutually agree,
5 in writing, to extend the time period for the lead agency to respond
6 pursuant to subparagraph (B), but they shall not extend that period
7 beyond the commencement of the public review period for the
8 proposed negative declaration, mitigated negative declaration, or
9 draft environmental impact report.

10 (D) The request to prepare a record of proceedings pursuant to
11 this paragraph shall be deemed denied if the lead agency fails to
12 respond within 10 business days of receiving the request or within
13 the time period agreed upon pursuant to subparagraph (C),
14 whichever ends later.

15 (g) The project applicant shall reimburse the lead agency for
16 the costs incurred in compliance with this section in a manner
17 specified by the lead agency and a plaintiff or petitioner in an
18 action or proceeding filed pursuant to Section 21167, if any, is not
19 required to pay these costs.

20 (h) The costs of preparing the record of proceedings pursuant
21 to this section and complying with the requirements of this section
22 are not recoverable costs pursuant to Section 1033 of the Code of
23 Civil Procedure.

24 (i) This section shall remain in effect only until January 1, 2017,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2017, deletes or extends that date.

27 SEC. 4. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 a local agency or school district has the authority to levy service
30 charges, fees, or assessments sufficient to pay for the program or
31 level of service mandated by this act, within the meaning of Section
32 17556 of the Government Code.